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Attorneys for Defendant Oracle Corporation

20 | GROUSE RIVER OUTFITTERS LTD.,

Case No. 3:16-cv-02954-LB

21 Plaintiff,

**PARTIES' JOINT STATUS UPDATE RE
DKT. 319**

23 ORACLE CORPORATION

24 || Defendant

1 Pursuant to the Court's Order, Dkt. 319, the parties submit the following joint update:

2 **Grouse River's Position**

3 From its reading of the Court's order, Grouse River understands that the Court's concern
 4 is to allow the parties to "know[] what their openings will look like." Grouse River's proposal does
 5 that:

6 In its opening statement, Grouse River will not mention any component or amount of the
 7 damages it is seeking. It may assert that its evidence will show that it has been damaged
 8 by NetSuite, but will not refer to any specific damage theory or amount.

9 Oracle can present anything it wants to present.

10 This will allow the parties to prepare and give their opening statements, and allow sufficient
 11 time for the court to determine, Monday or perhaps even later, what damages components Grouse
 12 River may present to the jury during its case in chief. Grouse River's damages evidence will be
 13 presented at the end of Mr. Fallis's testimony, which likely will be on Tuesday afternoon, so the
 14 court can decide the issues presented in a deliberative and orderly process.

15 Oracle is not prejudiced by this. The Court can and will decide this, as it has indicated in
 16 its order, on Monday. Oracle can of course prepare its opening statement and say whatever it wants
 17 to say.

18 **Oracle's Position**

19 Oracle's position is that the Court should not summon the jury on Monday so that the Court
 20 can first resolve what computation of damages, if any, Grouse River may pursue at trial.

21 Grouse River's opposition to Oracle's motion *in limine* confirms that Grouse River has
 22 abandoned the only adequately disclosed computation of damages that remained in this case, and
 23 intends instead, to proceed to trial based upon the lump sum categories of damages disclosed in its
 24 interrogatory responses that are unsupported by any computation in the record (and reflect
 25 categories of damages that Grouse River is not entitled to recover as a matter of law). Oracle is
 26 preparing a response to Grouse River's opposition and intends to ask the Court to preclude Grouse
 27 River from introducing any evidence of damages and enter judgment in its favor pursuant to
 28 Federal Rules 26(a)(1)(A)(iii), 26(e), and 37(c)(1).

1 Oracle thus does not think that the Court should summon a jury on Monday because there
 2 may no longer be a need for a jury (thus its language “at least”). But even if the Court disagrees
 3 with Oracle, and concludes that there is some admissible computation of damages that Grouse
 4 River is entitled to pursue at trial, Oracle must be given at least some additional time (until
 5 Tuesday, assuming no additional discovery would be required) to prepare its opening statement
 6 and defense, with an understanding of what those damages are and the evidence and computation
 7 that underlies them.

8 Grouse River’s proposal does not address the fundamental problem: Oracle’s defense must
 9 account for what measure and amount of damages Grouse River is entitled to seek. It cannot
 10 effectively prepare and deliver an opening statement without this information.

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12 Dated: July 5, 2019

LATHAM & WATKINS LLP

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By: /s/ Sarah M. Ray

Sarah M. Ray

Attorneys for Defendant *Oracle Corporation*

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By: /s/ Loren Kieve

Loren Kieve

Attorneys for Plaintiff *Grouse River Outfitters, Ltd*

SIGNATURE ATTESTATION

I, Sarah M. Ray, am the ECF User whose identification and password are being used to file the foregoing Joint Status Update. Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that concurrence in the filing of this document has been obtained.

Dated: July 5, 2019

LATHAM & WATKINS LLP

By: /s/ Sarah M. Ray

Sarah M. Ray

Attorneys for Defendant *Oracle Corporation*